IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 147 OF 2003

IN

SUM. SUIT NO. 6824 OF 1999

Birdy Fashion Pvt. Ltd., .. Plaintiffs.

vs.

Nexus Investments & Properties

Pvt. Ltd., & Anr. .. Defendants.

Mr. Vatsal Shah i/by C.N. Meha

for the plaintiff.

Mr. Cayres Pardeshi i/by Bilawala

for defendant no.1.

CORAM : S.U. KAMDAR, J.

DATE : 16th August, 2005.

P.C.

. The present suit is filed on a writing dated 16.11.1999 being Exhibit K to the plaint under which the defendant has agreed to refund the sum of Rs. 32 lacs in three instalments of Rs. 20 lacs on or before 30.11.1996, Rs. 16 lacs on or before 20.1.1997 and Rs. 16 lacs on or before 20.2.1997. The said writing also provides that the plaintiff

will return a flat purchased by him on completion of the above payments. Under clause (c) of the said writing the plaintiff has agreed that the flat will be returned to the builder on receipt of the aforesaid payment. In the present suit in paras. 3 and 4 of the plaint it has been inter alia stated that the plaintiff has paid a sum of Rs. 9,50,000/- towards undivided 3500/150000 shares in the said property and on various terms and conditions and Rs. 22 lacs in respect of the said flat bearing no. 602 admeasuring about 3500 sq. ft. It is an admitted position that the plaintiff has not surrendered his right, title and interest being an undivided 3500/150000 share or his claim in respect of the flat no. 602. In view thereof, the present summary suit filed for the recovery of Rs. 32 lacs in summary jurisdiction cannot be accepted. In my opinion, the aforesaid facts raise triable issues in respect of the so called writing and interpretation thereof being dated 16.11.1996 and in view thereof, an unconditional leave is required to be granted.

2. The defendants are granted unconditional leave to defend. Suit transferred to the list of Commercial Causes. Written Statement or points of defence to be filed four weeks from today. Affidavits list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on Board of the learned

Judge taking Commercial Causes.